IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2161 OF 2007

Indo Russian Aviation Ltd.... .....
Petitioner
V/s
Changan A. Vidathe & Ors.... .....
Respondents.

Mr.P.K.Rele, Sr. Counsel with Mr.Rajesh Rele, Adv. for the petitioner.

Mr.K.S.Bapat i/by Mr.AvinashH. Fatangare, adv. For respondents.

CORAM: A.P. DESHPANDE, J.
4.6.2007

PC:

The petitioner questions the legality and validity of the award passed by the Central Government Labour Court declaring that the services of the workman were terminated illegally by the petitioner. The workman has been granted reinstatement with back wages at the rate of Rs.2000/- per month from the date of termination till his reinstatement in service.

2. Learned counsel appearing for the petitioner has submitted that the Tribunal erred in granting almost full back wages to the workman without considering the offer made by the petitioner to join the duties. My attention is invited to the reply dated 23.5.98 sent by the learned counsel for the petitioner to the legal notice dated 18.5.98. It is stated in para 5 of the reply that the workman himself did not turn out to the office from 6.5.1988 and the offer thereafter reads thus:

"If he comes to my client's office and if the job is available, the

Company can given him job purely on daily wages provided he gives an undertaking that he would perform well, to maintain high order of integrity in view of a defence oriented company."

This conditional offer which says that if he comes to the office he will be provided job if available but the same would be provided subject to his giving an undertaking as referred to herein above. The offer was made only in the reply to the notice and no where it was reiterated either before the Conciliation Officer or before the Tribunal in the written statement filed by the petitioner. Perusal of the so called offer reveals that in fact no concrete offer was made and whatever was stated in reply notice was not even reiterated in the written statement. It is thus clear that the petitioner was not serious in offering job to the workman so that the workman having not availed the said offer could be denied back wages. It is next submitted that the workman has failed to make out a case about he not being gainfully employed during the period in question. The examination in chief of the workman filed before the Tribunal on affidavit clearly says that he has not been in gainful employment and could not secure one despite efforts. No evidence is led by the petitioner-employer to discharge the onus that shifts on the petitioner. Perused the award passed by the Tribunal. Same does not suffer from any patent illegality warranting interference in exercise of writ jurisdiction. Hence writ petition is summarily dismissed.

4.6.07.